

ORDINANCE NO. 862

AN ORDINANCE OF THE TOWN OF HOLLYWOOD PARK, TEXAS CREATING ARTICLE IV OF CHAPTER 70 OF THE TOWN OF HOLLYWOOD PARK CODE OF ORDINANCES PERTAINING TO THE REGULATION OF THE TOWING OF MOTOR VEHICLES FROM PRIVATE AND PUBLIC PROPERTY WITHOUT THE CONSENT OF THE VEHICLE OWNER OR OPERATOR; CREATING ARTICLE IV OF CHAPTER 70 OF THE TOWN OF HOLLYWOOD PARK CODE OF ORDINANCES REGULATING EMERGENCY NON-CONSENT TOWING OF VEHICLES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CRIMINAL PENALTY; PROVIDING FOR REPEALER; AND PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, the owners of private property have a right to manage their land, to include the removal of unwanted motor vehicles parked or standing thereon; and,

WHEREAS, the Town of Hollywood Park retains police power to manage, maintain, and regulate its streets and roadways, which includes the power to enforce non-consensual towing on public streets; and,

WHEREAS, the nonconsensual removal and storage of a motor vehicle presents an inherently coercive situation for the vehicle owner or operator as to gaining the release of the vehicle; and,

WHEREAS, there is evidence that some towing and/or storage companies have apparently taken advantage of this situation by charging an unreasonable fee for the release of a motor vehicle removed from private land and stored without the consent of the vehicle owner or operator; and,

WHEREAS, there is a need to assure vehicle towing and storage companies receive fair compensation for their services on non-consent tows from private property; and,

WHEREAS, after a public hearing the Town Council finds that there is a need to reasonably regulate certain practices of parking facility owners and towing companies, pursuant to the authority granted to municipalities by the Texas Occupation Code;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF HOLLYWOOD PARK TOWN COUNCIL:

SECTION 1

Chapter 70 Town of Hollywood Park Code of Ordinances is hereby amended to add the following Articles and Sections as follows:

Article IV: NON-CONSENSUAL TOWING OF MOTOR VEHICLE FROM PRIVATE PROPERTY

Sec. 70-100. Purpose and authority.

This Ordinance is enacted pursuant to Chapter 2308 of the Texas Occupation Code and the general police powers of a municipality to regulate traffic and motor vehicles on its streets. The purpose of this Ordinance is:

(a) To assure the rights: of property owners to have unattended and unwanted motor vehicles removed from their property; of towing companies to collect a fair fee for service; and, of vehicle owners to receive fair notice of restricted parking and the expeditious recovery of their vehicle for a fair fee;

(b) To assure prompt processing and reporting of non-consent tows by towing companies and vehicle storage facilities, so that police resources are not economically burdened by unfounded reports of stolen cars;

(c) To prevent theft of vehicles by an unscrupulous towing company or property owner, and to promote quicker determination that a vehicle has indeed been stolen;

(d) To regulate emergency non-consent tows initiated by a Town police or code enforcement officer; and,

(e) To provide the City with a means of performing the police power function of maintaining the streets and public ways open to public traffic through the voluntary participation of privately owned commercial towing and wrecker services.

Sec. 70-101. Definitions.

In this Article, words and phrases generally have their ordinary meaning or as may be assigned elsewhere in this Code of Ordinances. However, in this Article, the following words and phrases have the meaning indicated here:

(a) “*Non-consent tow*” or “*Non-consensual towing*” means the towing of a motor vehicle without the consent of the owner or operator of the vehicle.

(b) “*Designated emergency wrecker service*” means the emergency wrecker service with a valid contract designating the wrecker service as in charge of responding to all calls for emergency non-consent wrecker service.

(c) “*Towing company*” means a person operating a tow truck and otherwise in compliance with all applicable Texas statutes and administrative regulations. The term includes each owner, operator, employee, agent, subcontractor, or borrowed servant of a towing company, but does not include a political subdivision of the State.

(d) “*Unauthorized vehicle*” means a vehicle parked, stored, or located on private property without the consent of the property owner. The term also includes a vehicle determined to be a public safety hazard under section 70-107.

(e) “*Vehicle*” means a device in, on, or by which persons or cargo may be transported upon a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, bus, or trailer. The term does not include a device designed to be propelled by human power.

(f) “*Vehicle storage facility*” means a facility operated by a person licensed under Texas Occupations Code Section 2303.002.

Sec. 70-102. Removal of certain vehicles prohibited.

A person commits an offense if he intentionally or knowingly removes or causes the removal of a vehicle from private or public property, unless it is an unauthorized vehicle or illegally parked vehicle, or at the direction of a police officer.

Sec. 70-103. Financial interests of private property owner and towing company prohibited.

(a) It is an offense for a towing company to:

- (1) directly or indirectly give anything of value, other than a sign or notice required to be posted under this chapter, to a private property owner in connection with the removal of a vehicle from the private property; or
- (2) have a direct or indirect monetary interest in private property from which the towing company removes an unauthorized vehicle for compensation.

(b) It is an offense for an owner of private property to:

- (1) accept anything of value, other than a sign or notice required to be posted under

this chapter, from a towing company, in connection with the removal of a vehicle from the private property; or

(2) have a direct or indirect monetary interest in a towing company that for a fee removes an unauthorized vehicle from the private property.

(c) It is a defense to prosecution under Subsections (a)(2) and (b)(2) that the private property from which the vehicle is removed is a vehicle storage facility licensed under the Texas Vehicle Storage Facility Act.

Sec. 70-104. Requirements for posting signs.

(a) It is an offense for a person to remove or cause the removal of a vehicle from private property without signs being posted and maintained on the private property in accordance with this section for at least the 24 hours prior to the non-consensual towing and at the time of towing.

(b) All signs on private property giving notice of the private property owner's ability to tow an unauthorized vehicle shall meet all the minimum requirements set forth in Chapter 2308, Subchapter G of the Texas Occupation Code.

(c) A person commits an offense if, on the same private property, he posts or allows the posting of a sign or signs indicating the name of more than one towing company or the name, address, or telephone number of more than one vehicle storage facility.

(d) A person commits an offense if he removes or obstructs, or allows the removal or obstruction of, a sign required by this section. It is a defense to prosecution that the removal or obstruction was caused by:

(1) a Town employee in the performance of official duties; or

(2) the authorized towing company, for the purpose of repairing or maintaining the

sign, or upon terminating a towing service agreement for the private property.

(e) A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

(f) It is a defense to prosecution under Subsection (a) of this section that:

(1) before the vehicle was removed, the property owner provided the owner or operator of the vehicle with notice under Texas law (which requires the notice to be attached to the vehicle and sent certified mail to the vehicle's registered owner), and the towing company received written verification from the property owner that the required notice was given; or

(2) the vehicle was removed by or under the direction of a police officer.

Sec. 70-105. Release of a vehicle prior to removal.

A towing company, and the individual operating the tow truck, commits an offense if either or both of them fail to immediately release a vehicle without charge to the vehicle owner or operator if the release is requested before the vehicle has been partially or wholly lifted from the ground, tilted, or in any way otherwise moved by the person operating the tow truck.

Sec. 70-106. Notification of vehicle owner.

A towing company shall provide the owner or operator of any non-consent towed vehicle with written notice of how and to whom a complaint concerning the vehicle's removal or a violation of this ordinance can be made. The notice must specifically state that the vehicle owner has the right to challenge the legality of the tow and describe the process required for the challenge.

Sec. 70-107. Authorization for removal by Police.

(A police officer of the Town of Hollywood Park is hereby authorized to move a vehicle, require the driver or other person in charge of a vehicle to move the same or have the vehicle removed by the City's Designated Emergency Wrecker Service to the nearest place of safety or to the premises of said Designated Emergency Wrecker Service, under the following circumstances, which are hereby deemed to be public safety hazards:

(a). When any vehicle is left unattended upon any bridge, viaduct or causeway, or in any tunnel where such vehicle constitutes an obstruction to traffic;

(b). When any vehicle is otherwise legally parked so as to block the entrance to any private driveway;

(c). When any vehicle is found upon a street and a report has been previously made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that such vehicle has been embezzled, or there are reasonable grounds to believe the vehicle is stolen;

(d). When any such officer has reasonable grounds to believe that any vehicle has been abandoned;

(e). When a vehicle upon a street is so wrecked or disabled and

1. Because of the wreck or disability its normal operation is impossible or impractical;

or

2. The person or persons in charge of the vehicle are incapacitated by reason of physical injury or other reason to such extent as to be unable to provide for its removal or custody or are not in the immediate vicinity of the wrecked or disabled vehicle;

(f). When any such officer arrests any person driving or in control of a vehicle for an alleged offense and such officer is by this Code or other law required to take the person arrested immediately before a magistrate and it is unsafe to leave the vehicle unattended at the scene;

(g). Whenever any such officer finds a vehicle standing upon a street, or public or private property in violation of any State law or local ordinance;

(h). When the owner or operator consents;

(i). When, in the opinion of a police officer, the safety of said vehicle is imperiled by reason of any catastrophe, emergency or unusual circumstance;

(j). When the operator of a motor vehicle is requested to show proof of financial responsibility on that vehicle and is unable to establish financial responsibility under Section 601.051 of Texas Transportation Code.

(k). Where otherwise authorized by law.

Sec. 70-108. Dispatch procedures for removal by Police.

When a police officer investigating an accident or disablement in the City determines that any vehicle involved should be removed by a wrecker, the officer shall first determine whether or not the owner or his authorized representative has already made arrangements for its removal. If no arrangements have been made, the officer shall cause the following steps to be taken, in sequence, to complete the wrecker pull form:

(a). The officer shall request that the owner, driver or other vehicle occupant designate the place to which he desires the vehicle to be removed.

(b). The officer shall then immediately notify police headquarters and the officer in charge at headquarters shall immediately notify Designated Emergency Wrecker Service and shall give him the

information in (A) above and direct that he immediately proceed to the scene of the accident, disablement or arrest.

Sec. 70-109. Emergency non-consent wrecker service contract.

- (a) *Intent.* It is the intent of the City to contract with a wrecker service company to provide emergency non-consent wrecker service within the city limits.
- (b) *Contract required.* No wrecker service may engage in emergency non-consent wrecker service in the city without having an emergency non-consent wrecker contract with the City. The contract shall be drafted by the city attorney and executed on behalf of the City by the Mayor or his designated representative. The contract shall not be assignable or transferable. The contract between the City and an emergency wrecker company authorizes the contract holder and his bona fide employees to engage in emergency non-consent wrecker service in the city. The contract shall establish a minimum response time and specify insurance and equipment requirements.
- (c) *Registration.* The owner of an emergency wrecker company shall register the trade name of his wrecker company with the chief of police and shall permanently affix the name to the outside of both doors of each wrecker which is approved for operation under the terms of this chapter.

Sec. 70-110. Towing fee study.

(a) A “towing fee study” is a study to determine the fair market value of a non-consent tow originating in the Town, considering financial information provided to the Town by the towing company requesting the study.

(b) A towing company may request that the Town conduct a towing fee study by filing a written request with the Town by certified mail, return receipt requested, or by hand delivery.

(c) Within 90 days after the filing of an initial request, additional towing companies may join the request by filing written requests in accordance with Subsection (b).

(d) The Town shall conduct a towing fee study if the initial requestor and the additional requestors, if any:

(1) accounted for not less than fifty percent (50%) of the non-consent performed in the Town during the preceding twelve (12) month period, as determined by the Town; and

(2) deposit with the Town a fee of \$450.00 to cover the cost of the study.

(e) If the towing fee study is not conducted, the Town shall refund the fee, less an administrative fee of \$20.00.

(f) Each towing company requesting the towing fee study shall cooperate with the Town to conduct the study. Each towing company shall provide to the Town information determined by the Mayor to be reasonably necessary to conduct a meaningful fee study, including:

(1) an audited financial statement not more than one year old prepared by an independent certified public accountant that shows the current financial status of the towing company and includes an itemized statement of revenues and expenses;

(2) the number of employees of the towing company, including drivers and dispatchers, and each employee's position and annual compensation with the towing company;

(3) identification of all equipment owned or leased by the company that is used for the towing service, including a statement of the costs of acquiring or leasing the equipment; and

(4) copies of the past three years tax returns for the towing company.

(g) The Town shall, to the extent permitted by law, keep confidential the information provided by the towing companies relating to the towing fee study.

(h) The Town shall complete a towing fee study not later than the 120th day after receiving all information required under Subsection (f).

(i) The Mayor, or his designee, shall present to the Town council the results of the towing fee study. The Town shall give to each towing company that owns or leases tow trucks registered with the Town written notice of the time, date, and location of the Town council meeting at which the study is to be considered. The notice must be sent by United States regular mail to the towing company's address listed in the latest registration application on file with the police chief.

(j) Based on the results of the towing fee study, the Town council may change the non-consent towing fees. The maximum fees must represent the fair market value of the services of a towing company performing non-consent tows originating in the Town and be reasonably related to any financial or accounting information provided to the Town relating to towing services.

(k) The Town is not required to conduct more than one towing fee study within a two-year time period, measured from the date the Town council most recently considered a towing fee study.

Sec. 70-111. Enforcement.

(a) The police department shall receive and investigate complaints of alleged violations of this Ordinance.

(b) A police officer, upon observing a violation of this Ordinance, shall take necessary enforcement action to insure effective regulation of non-consent towing of vehicle and related storage of same.

(c) The Town Attorney is authorized to pursue all available civil remedies, including injunctive relief, against any private property owner, parking facility owner, towing company, vehicle storage facility, or other person that fails or refuses to comply with this Ordinance.

Sec. 70-112. Offenses.

(a) A person commits an offense if he violates a provision of this chapter applicable to him. A culpable mental state is not required for commission of an offense under this chapter unless the provision defining the conduct expressly requires a culpable mental state. A separate offense is committed each day in which an offense occurs. A separate offense occurs for each vehicle non-consent towed in violation of any provision of this ordinance. An offense committed under this chapter is punishable by a fine of not less than \$200 nor more than \$500. The minimum fine established in this subsection shall be doubled for the second conviction of the same offense within any 24-month period and trebled for the third and subsequent convictions of the same offense within any 24-month period. At no time shall the minimum fine exceed the maximum fine established in this subsection.

(b) Prosecution for an offense under Subsection (a) does not prevent the use of civil enforcement remedies or procedures as to the person charged with the conduct involved in the offense.

Sec. 70-113 Storage facilities.

Each commercial wrecker service that has a contract with the Town must have storage facilities that meet the following criteria:

(a) The storage facilities must have a clearly visible sign outside the facility that indicates a phone number at which a person may call in order to redeem a vehicle after normal business hours.

(b) The storage facilities will be covered by sufficient insurance to cover the probable loss by fire or theft occurring to the stored vehicles. Proof of such insurance must be furnished to the police department and Town secretary.

(c) The storage facilities must have a minimum capacity of ten vehicles.

Sec.70-114 Insurance.

Each participating emergency wrecker service shall procure and keep in force and effect and shall keep on file with the police department and Town secretary a policy of public liability and property damage insurance or a certificate of insurance, issued by a casualty insurance company authorized to do business in the state. The policy or certificate shall be in the standard form approved by the state board of insurance, shall contain a provision that at least ten days prior notice of material change or cancellation of the insurance shall be given to the Town by the insurance company, and shall contain a provision which includes the Town as an additional named insured. The coverage provisions of the policy shall insure the public from loss or damage that may arise to any person or property because of the operation of a participating tow truck and shall be as set out in any contract with the City.

Sec. 70-115 Wrecker operations.

(a) *Response time.* An emergency wrecker service shall respond to the scene requested within 30 minutes.

(b) *Clean-up procedures.* Each emergency wrecker service that responds to the scene of an accident is required to remove all glass and debris from the scene of the accident.

(c) *Traffic laws.* Each emergency wrecker service shall comply with all applicable traffic laws.

Sec. 70-116 Inspection and equipment requirements for wreckers.

(a) Each emergency wrecker may be inspected by the police department annually to ensure compliance with all applicable regulations and code provisions.

(b) Each emergency wrecker shall have a boom at least six feet in length, a tow bar, safety chain, five-pound ABC fire extinguisher, wrecker bar, broom, axe, blunt edge shovel, ten pounds of absorbent material, a first aid kit, parking flares, amber emergency overhead lights, two-way radio and winch operating controls on either side of the truck or inside the cab. Flatbed load up wreckers are not required to have a boom.

(c) Each emergency wrecker shall be equipped with booster brakes.

SECTION 2. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the Town Commission of the Town of Hollywood Park, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

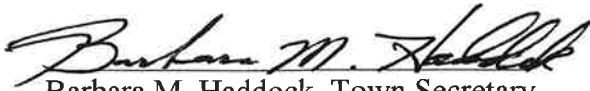
SECTION 3. Repealer. All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of conflict with this Ordinance.

INTRODUCED AND PASSED by the Town Commission of the Town of Hollywood Park, Texas, on First Reading this the 19th day of August, 2008; and PASSED on Second and Final Reading the 19th day of August, 2008.



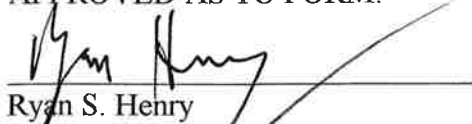
Richard McIlveen, Mayor
Town of Hollywood Park

ATTEST:

A handwritten signature in black ink, appearing to read "Barbara M. Haddock", written over a horizontal line.

Barbara M. Haddock, Town Secretary
Town of Hollywood Park

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Ryan S. Henry", written over a horizontal line.

Ryan S. Henry
Town Attorney
Town of Hollywood Park